

1 ERSKINE & TULLEY  
A PROFESSIONAL CORPORATION  
2 MICHAEL J. CARROLL (St. Bar #50246)  
220 Montgomery Street, Suite 303  
3 San Francisco, CA 94104  
Telephone: (415) 392-5431  
4 Fax: (415) 392-1978

5 Attorneys for Plaintiff

6  
7  
8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10

11 NORTHWEST ADMINISTRATORS, INC., ) NO. C 08 0135 WDB  
12 )  
Plaintiff, ) COMPLAINT  
13 )  
vs. )  
14 )  
BAYVIEW ROCK, A CALIFORNIA LIMITED )  
15 )  
LIABILITY COMPANY )  
16 )  
Defendant. )  
\_\_\_\_\_ )

17  
18 Plaintiff complains of defendant and for a cause of action  
19 alleges that:

20 1. Jurisdiction of this Court is founded upon Section  
21 301(c)(1) of the National Labor Relations Act of 1947 [29 U.S.C.  
22 § 185(a)] and Section 502 of the Employee Retirement Income Security  
23 Act of 1974, said Act being hereinafter referred to as "ERISA" (29  
24 U.S.C. 1132), in that defendant has violated a collective bargaining  
25 agreement and certain Trust Agreements, thereby violating the  
26 provisions of ERISA and the provisions of the National Labor Relations  
27 Act of 1947. This action is also brought pursuant to the Federal  
28 Declaratory Judgment Act (28 U.S.C. § 2201 et seq.) in a case of

COMPLAINT

1 actual controversy between plaintiff and defendant, and for a Judgment  
2 that defendant pay fringe benefit contributions in accordance with its  
3 contractual obligations.

4           2. Plaintiff is an organization incorporated and in good  
5 standing under the laws of the State of Washington. Plaintiff has  
6 qualified to do business and is doing business in the State of  
7 California, and its principal place of business in California is in  
8 Daly City, San Mateo County. Plaintiff is the administrator of the  
9 WESTERN CONFERENCE OF TEAMSTERS PENSION TRUST FUND and has been  
10 directed and authorized by the Trustees of said Trust Fund to bring  
11 this action for and on behalf of the Trustees of said Trust Fund. The  
12 WESTERN CONFERENCE OF TEAMSTERS PENSION TRUST FUND will hereinafter  
13 be referred to as the "TRUST FUND". The Agreement and Declaration of  
14 Trust, dated April 26, 1955 (hereinafter referred to as the "Trust  
15 Agreement"), which Trust Agreement established the TRUST FUND sets  
16 forth the provisions governing the maintenance of the TRUST FUND  
17 pursuant to the applicable requirements of Section 302 of the Labor  
18 Management Relations Act of 1947 (29 U.S.C. § 186) as amended.

19           3. Each and every defendant herein is the agent of each and  
20 every other defendant herein. Defendants and each of them are engaged  
21 in commerce or in an industry affecting commerce.

22           4. At all times pertinent hereto defendant was bound by  
23 a written collective bargaining agreement with Teamsters Local Union  
24 No. 853, a labor organization in an industry affecting commerce. The  
25 aforesaid agreement provides that defendant shall make contributions  
26 to the WESTERN CONFERENCE OF TEAMSTERS PENSION TRUST FUND on behalf  
27 of defendant's employees on a regular basis, and that defendant shall  
28 be bound to and abide by all the provisions of the Trust Agreement

1 above referred to.

2           5. The TRUST FUND relies upon a self reporting system.  
3 Defendant has unique knowledge of the amounts of contributions that  
4 it is liable to pay each month, and has a fiduciary obligation to  
5 accurately report the amount to the TRUST FUND.

6           6. Defendant has breached both the provisions of the  
7 collective bargaining agreement and the Trust Agreement above referred  
8 to by failing to complete and send in monthly reports and/or to pay  
9 all moneys due thereunder on behalf of defendant's employees to the  
10 TRUST FUND. Said breach constitutes a violation of ERISA (29 U.S.C.  
11 1002, et seq.) and of the National Labor Relations Act of 1947.

12           7. Defendant has failed and refused to pay in a timely  
13 manner since July 1, 2007. Pursuant to the terms of the collective  
14 bargaining agreement, there is now due, owing and unpaid from  
15 defendant to the TRUST FUND contributions for hours worked by covered  
16 employees (Pension Account 315622) for the month of July 2007, August  
17 2007, September 2007 and October 2007 and liquidated damages and  
18 interest which are specifically provided for by said agreement. The  
19 total amount due is unknown at this time; additional monthly amounts  
20 may become due during the course of this litigation and in the  
21 interest of judicial economy, recovery of said sums will be sought in  
22 this case. Interest is due and owing on all principal amounts due and  
23 unpaid at the legal rate from the dates on which the principal amounts  
24 due accrued. The total amount due in this paragraph is unknown at  
25 this time, except to the defendant.

26           8. Demand has been made upon said defendant, but defendant  
27 has failed and refused to pay the amounts due the TRUST FUND or any  
28 part thereof; and there is still due, owing and unpaid from defendant

1 the amounts set forth in Paragraph 7 above.

2           9. An actual controversy exists between plaintiff and  
3 defendant in that plaintiff contends that the TRUST FUND is entitled  
4 to a timely monthly payment of trust fund contributions now and in the  
5 future pursuant to the collective bargaining agreement and the Trust  
6 Agreement, and defendant refuses to make such payments in a timely  
7 manner.

8           10. The TRUST FUND does not at this time seek to audit the  
9 books and records of defendant. The only issue raised in this  
10 complaint is defendant's failure to complete and file voluntary  
11 monthly reports and pay the contributions due. The TRUST FUND seeks  
12 to obtain a judgment for any outstanding delinquent contributions  
13 based on defendant's reports and to reserve the right to audit  
14 defendant for this or any other unaudited period.

15           11. The Trust Agreement provides that, in the event suit is  
16 instituted to enforce payments due thereunder, the defendant shall pay  
17 court costs and a reasonable attorneys' fee. It has been necessary  
18 for plaintiff to employ ERSKINE & TULLEY, A PROFESSIONAL CORPORATION,  
19 as attorneys to prosecute the within action, and a reasonable  
20 attorneys' fee should be allowed by the Court on account of the  
21 employment by plaintiff of said attorneys.

22           WHEREFORE, plaintiff prays:

23           1. That the Court render a judgment on behalf of plaintiff  
24 for all contributions due and owing to the date of judgment based upon  
25 unaudited reporting forms, plus liquidated damages provided for by the  
26 contract, interest at the legal rate, reasonable attorneys' fees  
27 incurred in prosecuting this action and costs.

28           2. That the Court enjoin the defendant from violating the

1 terms of the collective bargaining agreements and the Trust Agreement  
2 for the full period for which defendant is contractually bound to file  
3 reports and pay contributions to the TRUST FUND.

4 3. That the Court reserve plaintiff's contractual right to  
5 audit defendant for months prior to judgment, and in the event of such  
6 audit, collect any additional sums which may be due.

7 4. That the Court retain jurisdiction of this cause pending  
8 compliance with its orders.

9 5. For such other and further relief as the Court deems  
10 just and proper.

11 Dated: January 7, 2008

12 ERSKINE & TULLEY

13  
14 By: /s/Michael J. Carroll  
15 Michael J. Carroll  
16 Attorneys for Plaintiff  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28